

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Biennial Regulatory Review of the)	WT Docket No. 98-20
Commission's Rules to Facilitate)	
the Development and Use of the)	
Universal Licensing System in the)	
Wireless Telecommunications Services)	

To: The Commission

**COMMENTS OF
WNP COMMUNICATIONS, INC.**

WNP Communications, Inc. ("WNP"), by its attorneys and pursuant to the *Order* of the Chief of the Commercial Wireless Division,^{1/} hereby submits its comments in response to the *Notice of Proposed Rulemaking* (the "*NPRM*") in the above-captioned proceeding.^{2/} The following is respectfully shown.

WNP was the high bidder for 39 A Block licenses and 1 B Block license in the Commission's recently completed auction of geographic area licenses to provide Local Multipoint Distribution Services ("LMDS") under Part 101 of the Commission's Rules. The Commission has not yet issued any geographic area LMDS licenses. Nonetheless, as WNP has moved forward with system design and implementation, it has identified a provision of the

^{1/} DA 98-827, released May 4, 1998.

^{2/} FCC 98-25, released March 18, 1998.

technical and operational LMDS rules, which were adopted well before the LMDS auction,^{3/} which it believes should be removed consistent with the goals set forth in the *NPRM*.

**I. The Burdens Created by the Present
Notification Requirements for Geographic Area LMDS Licensees
Far Outweigh Any Perceived Benefits**

As a general rule, Part 101 licensees may not make modifications to a station license without the Commission's prior approval. 47 C.F.R. § 101.57. Licensees may, however, make certain changes to authorized facilities without prior approval if they file a Form 600 (Form 601 under the proposed rules) within 30 days after making the change. 47 C.F.R. §§ 101.61(b)(3), (c). The permissible changes include, for LMDS licensees, "the addition, removal, or relocation of facilities within the area authorized by the license, except as provided in § 101.1009." 47 C.F.R. § 101.61(c)(10). Read together, Sections 101.61(c)(1) and 101.1009(a) thus appear to require notification in virtually all instances where an LMDS licensee adds, removes, or relocates system facilities.^{4/}

^{3/} *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, 12 FCC Rcd. 12545 (1997) ("LMDS Second Report and Order").

^{4/} Section 101.1009(a) allows an LMDS licensee to construct and operate fixed stations anywhere within its licensed BTA without prior authorization, except under four specified sets of circumstances. 47 C.F.R. § 101.1009(a). Section 101.1009(b) states that "[w]henver a licensee constructs or makes system changes as described in paragraph (a), the licensee is required to notify the Commission within 30 days of the change under Section 101.61 and include a statement of the technical parameters of the changed station." It is possible to read Sections 101.61 and 101.1009 as being in conflict, because the former provision includes an exception ("except as provided in Section § 101.1009"), and Section 101.1009 itself does not unambiguously require notification of every addition, removal, or relocation of facilities.

The notification requirement for the permissible changes under Sections 101.61(c)(10) and 101.1009(b) is particularly onerous for LMDS licensees.^{5/} In adopting the LMDS service rules, the Commission sought to provide geographic area licensees with substantial flexibility “to design their service offerings in response to market demand.” *LMDS Second Report and Order*, para. 208. Indeed, these rules were intended to embody a policy established by the Telecommunications Act of 1996 of “promot[ing] competition in telecommunications markets through removing regulatory barriers to entry, encouraging technological developments, and ensuring that consumer demand is met.” *Id.*, para. 205. The notification requirement places a significant burden on new entrants seeking rapidly to implement competitive services and thus undermines the important policies underlying the LMDS rules.

WNP intends to install a substantial number of hub facilities throughout its 40 BTAs, with related CPE facilities that will greatly expand the networks reach. WNP’s network design will incorporate the principle of flexibility by allowing WNP to readily relocate facilities to respond quickly to evolving customer demands for a variety of broadband service offerings. Filing an application, even on a notification basis, for each facility change and facility relocation (including each instance when an additional link is added to a customer site served by a hub facility) will require it to dedicate considerable resources -- solely for the purpose of responding to the Commission’s administrative rules -- that otherwise could be devoted to serving

^{5/} WNP does not object to the notification filing requirement for the facility changes specified in Section 101.1009(a).

customers.^{6/} The notification requirement also exposes LMDS licensees to competitive harm by compelling the disclosure of proprietary and confidential information, including the location of customers, that would be extremely valuable to competing service providers.

The notification provision subjects LMDS licensees to burdens not faced by other licensees. For example, point-to-point microwave licensees in the 38.6 - 40.0 GHz frequency band, who, like LMDS licensees, also have substantial flexibility to add and move facilities throughout their service areas, at one time were required to report to the Commission on a semi-annual basis on the location of their transmitters. This requirement was deleted when the Commission revised its Part 101 rules in 1996.^{7/} Consequently, 39 GHz licensees are not subject to the same burdensome obligation as LMDS licensees, even though they may offer substantially similar services. Deleting the notification requirement for LMDS licensees therefore would conform to the Commission's goal of "equalizing, as much as possible, the reporting burden" on licensees. *NPRM*, para. 78.^{8/}

While the burdens of the notification requirement are great, there are no evident benefits to the Commission or to the public. When the Commission adopted the LMDS

^{6/} Obviously, the resources of the Commission, too, will be burdened by the need to process thousands of notifications each year from LMDS licensees.

^{7/} Compare 47 C.F.R. § 21.711(c) (1995) with 47 C.F.R. § 101.149 (1997).

^{8/} As the Commission noted, "most geographic licensees do not generally require modification for technical changes [such as a change of coordinates, antenna height, or transmitting power] to individual sites within a licensee's service area, because the license affords the licensee the flexibility to make these changes without modification of its authorization provided it complies with the basic operational and technical rules applicable to the service." *NPRM*, para. 36.

notification rule, it noted that “although licensees are free to establish or modify operations anywhere within their licensed area at any time, it is necessary that we have on file updated information on the technical aspects of any operations under our jurisdiction for enforcement and other purposes and not, as here, for authorization.” *LMDS Second Report and Order*, para. 235 (emphasis added). Thus, apart from undefined enforcement purposes, no public interest purpose for the requirement has been identified, and in any event it is not clear what enforcement purposes would be served by the notification that could not be achieved through other Commission processes, including frequency coordination procedures. Notification still would be required for other system modifications, including those specified in Section 101.1009(a). In light of the large area covered by a typical BTA license, and the relatively restricted distances encompassed by communications paths in the LMDS frequencies, LMDS operations will have little discernible effect on other operations that would warrant notification in the vast majority of instances.

In sum, deletion of the requirement that LMDS licensees notify the Commission of the “addition, removal, or relocation of” all facilities within its BTA would be consistent with the Commission’s goals and its express finding that reduced filing burdens are in the public interest. *NPRM*, para. 79.

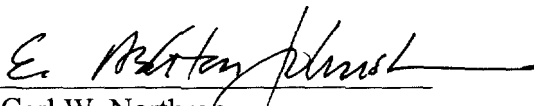
II. WNP Supports Elimination of Other Filing Requirements

In the *NPRM*, the Commission proposes to eliminate the requirement that Part 101 licensees include information regarding type acceptance, line loss, channel capacity, and baseband signal type in their applications. *NPRM*, para. 84. WNP supports this proposal, which is consistent with the Commission’s goals of reducing burdensome filing obligations.

WHEREFORE, the foregoing premises having been duly considered, WNP respectfully requests that the Commission amend Part 101 of its rules consistent with the foregoing comments.

Respectfully submitted,

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